

Remarks

Claims 1-22 are pending in this application. Claims 1-14 and 16-22 stand rejected under 35 U.S.C. Section 103(a) in view of the proposed combination of U.S. Published Patent Application 2002/0129001 A1 to Levkoff and Published U.S. Patent Application 2003/0040870 A1 to Anderson et al. Claim 15 stands rejected under 35 U.S.C. Section 103(a) in view of the proposed combination of Levkoff et al., Anderson et al. and Scheitlin.

Levkoff et al. was published on September 12, 2002 based on a filing date of December 12, 2001 and on a provisional application filed December 12, 2000. Similarly, Anderson et al. was published on February 27, 2003 based on an April 18, 2001 filing date and on provisional applications respectively filed on November 22, 2000 and April 18, 2000. The instant application was filed December 22, 2000. To the extent that the published applications include new and additional material not disclosed by the provisionals, that new matter is subsequent to the filing date of the instant application and therefore does not constitute prior art. As the provisional applications are not available to applicant, it is incumbent upon the Examiner to identify and confirm that the material relied upon in making the rejections under 35 U.S.C. Section 103 is in fact present in the provisional as well as in the published application. Otherwise the rejections are improper and should be withdrawn.

Applicant agrees with the Examiner's recognition that neither Anderson et al. nor Levkoff et al. constitutes a reference under 35 U.S.C. Section 102 and further traverses the rejections under 35 U.S.C. Section 103.

Applicant submits that, while Levkoff et al. and Anderson et al. may individually constitute prior art, the combination proposed by the Examiner could not be in fact made until both applications were published and available to the public. It was impossible for anyone to combine Anderson et al. with Levkoff et al. until Anderson et al. was actually published on February 27, 2003, a date which is well after applicants December 12, 2000 filing date. Consequently, the rejection under 35 U.S.C. Section 103 as proposed cannot be made.

Additionally, a person of ordinary skill in the art would not make the combination proposed by the Examiner inasmuch as the references are dissimilar and do not lend themselves to combination. Specifically, Anderson et al. relates to a system and process for custom designed biological array design and analysis whereas Levkoff et al. is directed to assimilation and integration and deployment of architectural engineering and construction information technologies. Levkoff et al. specifically states in numbered paragraph 8 that "The AEC Industry is in need of a universal, standardized platform for representing and tracking building components during their entire life cycle". Contrast Anderson et al. in numbered paragraph 2 which states that it "provides a process and system for obtaining customer orders for custom designed biochips comprising obtaining desired target sequences from the customer, wherein the target sequences consist essentially of oligonucleotide sequences, polypeptide sequences or antigens to be bound . . .". It is submitted that a person of ordinary skill in the art would not only find these nonanalogous to the process of manufacturing products as claimed in the claims on file but not analogous to each other and would not make the combination proposed by the Examiner. Furthermore, it is incumbent upon the Examiner to identify a reason to make the proposed combination. Such a reason in the references has not been identified and therefore the proposed combination cannot be made.

Applicant also submits the Affidavit of Earl Sanders, an inventor of the present invention, indicating that the claims on file were invented prior to the effective date of the cited references. Consequently, the documents relied upon in making the rejection do not constitute prior art.

For all of the foregoing reasons, the rejection of the claims on file are requested to be reconsidered and withdrawn, and this application issued without further delay.

Respectfully Submitted,



William O'Driscoll

Registration No. 33,294

Telephone Number: (608)787-2538

E-Mail Address: bodriscoll@trane.com